



THINK PIECE HOLIDAY EBOOK

Waranch & Brown's 2023

Medical Defense Trial Tactics & Physician/Practice Tips

W&B

WARANCH + BROWN

Representing Health Professionals

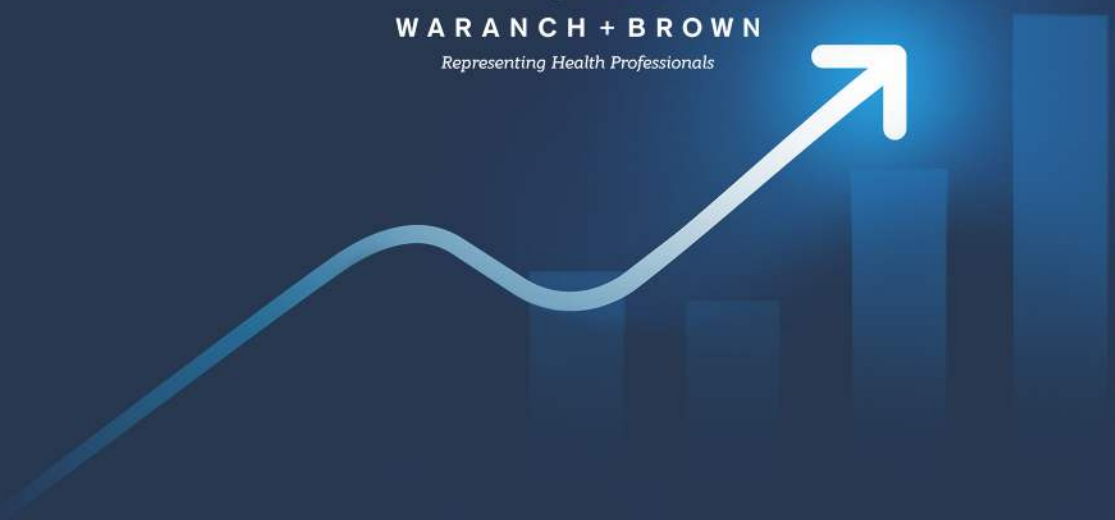


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INTRODUCTION

Marylanders were affected by new trends in 2023, including the emergence of artificial intelligence, nuclear verdicts and concerns about physician mental wellness. For those in healthcare, the rate of change continues to accelerate.

How can healthcare providers and insurance companies – *especially* those facing malpractice, general liability, or professional administrative defense issues – keep up with the changing times and learn about strategic alternatives?

To help you think through your options, we present W&B's Annual eBook: Trial Tactics and Physician/Practice Tips.

Within our eBook, we offer strategies for reducing damages, avoiding traps, conserving resources, and staying ahead of the opponent.

After years of helping professionals adopt strategies and tactics to protect their institutions and practices, we believe one can never be too innovative in challenging plaintiffs' claims.

Happy Holidays!

Think Piece #1

War Story: Vindication for a Physical Therapist



Watch the Video Think Piece on YouTube: https://www.youtube.com/watch?v=EG_MtAi5eCA

Waranch & Brown's Managing Partner, Christina N. Billiet, and Associate, Taylor Deer, recently had the privilege of representing a local hospital and physical therapist at trial in the Circuit Court for Baltimore County. We are pleased to share some of the challenges they faced, along with strategies that led to a hard-fought victory.

This medical negligence case arose out of a physical therapy evaluation immediately following the plaintiff's total knee replacement. The plaintiff claimed our physical therapist client ambulated her improperly, leading to a ruptured quadriceps tendon.

The case was challenging for many reasons, including the timing of the injury, which indisputably occurred during the evaluation, and the sympathy factor, driven by the fact that the plaintiff was rendered wheelchair-bound for life.

We took a bold approach and addressed those issues head-on. We accepted sympathy for the plaintiff but implored the jury to set that aside while they were focusing on the issues of standard of care and causation. To the great relief of our physical therapist client, the jury was able to do so. After about an hour of deliberations, the jury returned a defense verdict on standard of care.

As it often is, the litigation process was draining on our client, who viewed herself personally and professionally through the lens of the claims against her. We focused on supporting her mentally throughout the process and ensured she was prepared to present her best self to the jury — substantively *and* emotionally.

This case reaffirmed our core values of providing genuine care and tireless advocacy for our clients. At Waranch & Brown, we believe our clients require and deserve true support from their team of lawyers.

Watch our War Story [Video Think Piece on WBTV](#).

Think Piece #2

Setting the Stage for a Successful Appeal



Waranch & Brown is pleased to introduce its Appellate Division, chaired by April J. Hitzelberger, Esquire. This special feature of our Think Pieces is designed to support the claims representatives in your legal department. Please feel free to share April's battle-tested strategies and tips for a successful appeal.

1. Start at the pre-trial stage. File thoughtful, well-supported motions. If denied, most are not immediately appealable but can be appealed post-verdict if properly preserved.
2. Preserve the record at trial. Raise matters appropriately during trial and object when necessary. Only those issues preserved for appeal will be considered.

3. Consider post-trial motions. Can you avoid the need for an appeal?
4. Assess the likelihood of success. Is the law on your side? Are the facts not in dispute? Is this an unsettled area of the law?
5. Read the Rules and then read them again. This is the #1 piece of advice from the appellate clerk's office. The Rules may have changed since your last appeal. They are extraordinarily specific and provide a roadmap for all appellate filings.
6. Create the record extract. An appellate extract is much more streamlined than a trial. Only those documents that are relevant and necessary to the rule on the specific appellate issue are required.
7. Plan your brief. Be specific in what you are asking the Court to do and present your arguments in a concise and logical manner.

8. Eliminate as many unknowns as possible. Know your jurisdiction and know your audience. Research prior decisions and watch prior oral arguments from your bench to learn questioning styles and relevant policy concerns.
9. Plan for oral argument. Request oral argument in your brief if you want it and conduct a moot argument. Be prepared for a hot or a cold bench. Consider hypotheticals that stretch the limits of your position and examine the policy implications if the court were to rule in your favor.
10. Be prepared for the next step. Will there be grounds for a motion for reconsideration (rarely granted)? Is there a legal basis for filing a Petition for *Certiorari* and is this a matter that is likely to be accepted? When in doubt, read the Rules and then read them again!

If Waranch & Brown's appellate team can assist you in any way, please [contact us](#).

Think Piece #3

Big Verdicts: Are Juries Being Swayed by Exaggerated Life Care Plans from the other Side?



A new trend may be emerging for health care professionals facing trial, and it's not a welcome one: big verdicts.

Consider a recent verdict for an Iowa family in a birth injury case that is the largest in that state's history for medical malpractice cases. The lion's share of the \$97M was for future 'round-the-clock medical care for the brain-damaged child, throughout his life.

Since jury trials have begun in earnest post-pandemic, the size of the awards has been surprisingly large. And we see no evidence of jury sympathy for health care providers or medical systems that weathered the pandemic storm. On the contrary, we have seen recent large medical malpractice verdicts in Baltimore City

(\$33M), Washington, D.C. (\$17M), Harford County (\$13M), Frederick County (\$9.9M), and Howard County (\$5M).

As we always say, every case is unique, and the verdict turns on the facts. But these large verdicts show a willingness to award sums reflecting deference to the Plaintiffs' life care plans and often economically inflated opinions. Is this a trend that is here to stay or just aberrant awards on difficult cases? Only time will tell.

In the meantime, we continue efforts to undermine the Plaintiffs' life care plans and aggressively challenge opposing life care planners, their methods, purported techniques, and forensic work. If you need any help with your cases or would like to discuss potential large dollar exposure, [we are here to help.](#)

Think Piece #4

Navigating the Stress of Medical Malpractice Litigation: Insights from Doctors and Experts



How can health care providers survive and thrive during medical malpractice litigation? Watch our webinar, “Navigating the Stress of Medical Malpractice Litigation: Insights from Doctors and Experts.”

The webinar features esteemed physicians, Alice Ackerman, M.D. and Sonny Goel, M.D., and psychiatrist Arman Taghizadeh, M.D., who will share valuable insights and “lessons learned” from those who have experienced and counseled others on the challenges of a medical malpractice lawsuit and trial. Hosted by Waranch & Brown’s Nicole Deford, Esquire, the panel of trial-

experienced doctors will share their strategies for combatting stress and other challenges associated with enduring medical malpractice litigation.

During the one-hour moderated presentation, participants experience — from the doctor’s point of view — what it is like to traverse the various stages of medical malpractice litigation, including depositions, trial preparation, and the trial itself. They also learn tools for recognizing and addressing the emotional impact of litigation. The presentation concludes with a brief question and answer discussion.

Don’t miss this opportunity to learn from doctors and experts who have successfully completed this process and come out on the other side: “Navigating the Stress of Medical Malpractice Litigation: Insights from Doctors and Experts.”

Think Piece #5

Embracing the Future: Waranch & Brown's Artificial Intelligence Policy



Waranch & Brown is proud to share its *Generative AI Responsible Use Policy*. This policy underscores the firm's commitment to staying at the forefront of technological advancements while ensuring a responsible and ethical approach to AI.

As we navigate the evolving landscape of technology, we recognize the ability of AI to enhance the efficiency and effectiveness of our legal services. At Waranch & Brown, we are harnessing the power of AI to augment our legal capabilities while maintaining the human touch that defines our practice. Our team of experienced professionals is dedicated to providing the highest quality legal services while leveraging AI responsibly.

We understand the importance of balancing innovation with the ethical implications that arise from the use of AI in the legal domain. Our policy for use reflects that balance.

Should you have any inquiries or require legal assistance, [please contact us](#).

ABOUT THE AUTHORS

Waranch & Brown thought leaders publish electronic “Think Piece” newsletters on current legal issues.



Waranch & Brown, LLC, is a regional litigation practice based in Baltimore County, Maryland.

Our clients include health care providers, hospital systems, and national insurance carriers. The firm provides trial attorneys with over 250 years of collective litigation experience.

To speak with a representative of Waranch & Brown, please visit <https://waranch-brown.com>, or call us at (410) 821-3500.